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JMCHALE
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SUBJECT: General Counsel Sullivan Visits South China to promote transparency

¶1. (U) Summary: During a three day visit to South China, the U.S. Department of Commerce's General Counsel John Sullivan met with senior representatives of Guangdong Province, legal representatives and U.S. business representatives, raising U.S. concerns regarding transparency, legal processes, and Guangdong's evolving open government policy. At a meeting with senior provincial officials and at a roundtable discussion with legal representatives and U.S. business representatives, the General Counsel stressed a need for a stronger Chinese engagement - with greater emphasis on transparency - in order to move the SED forward. End summary.

¶2. (U) General Counsel Sullivan began his visit to South China by visiting the FEDEX Headquarters and discussing its march toward establishing its Asian Headquarters in Guangzhou. GM Alex Yim and South China's regional manager Robert Chu outlined their program and benchmarks leading to 2012, the scheduled completion date. FEDEX officials stated that the Guangdong government was "progressive" (avoiding the use of the word "transparent") in its response to change but the company still faced hurdles with rules and regulations that were not always clear. The FEDEX officials stated that they were generally pleased with the CAAC, which appeared to be driven by business realities. The challenges facing FEDEX are within the transportation regulation and postal laws which prohibit them from sending express mail delivery into the city. Acquiring all of the shares of its joint venture partner DTW in March should solve this issue (See septel for fuller readout).

¶3. (U) In his introductory meeting with provincial officials, General Counsel Sullivan met with Secretary General XU SHANG WU, the Secretary General of the province and the senior official

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responsible for legislative affairs. During the meeting General Counsel

Sullivan stressed the importance of U.S. and Chinese ties and praised Guangzhou's dynamic economic growth. Growth and economic development, the Chinese side recognized, created even more challenges. The General Counsel outlined his visit with senior Chinese officials in Beijing and Shanghai; he reviewed the SED proposals and goals and focused on how transparency is essential for dealing with real economic situations. Mr. Sullivan used the FEDEX history of cooperation as a good example for mutual benefit. Secretary General Xu responded positively and stressed the need for

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educational exchanges and specifically a student exchange program (Note: Secretary General Xu's staff stated that this was his only meeting with visitors as the government was extremely busy with elections for local offices and as well as electing representatives to attend the National Congress. End note.).

¶4. (U) At a roundtable discussion, General Counsel Sullivan held frank discussions regarding market access, IPR protection and enforcement with members of the American Chamber of Commerce, South China, business representatives, and members of several legal firms.

AmCham members and others stressed the importance of uniformity of rules and regulations. Almost all emphasized that rules and regulations vary at the national and the provincial levels and again at the local level. Business representatives cited the purchase of land use rights as an example of the unpredictability and lack in uniformity of local regulations. Administrative transparency is often lacking. While there may be consistency and uniformity nationally in laws and regulations, local interpretations of laws, rules, and regulations differ greatly. Additionally, the "laws and regulations" (fagui) cited by a local office may only reflect the policy within an office and not actually exist legally. P&G executives cited the laws and regulations governing the advertising and cosmetics industries as examples of local implementation and interpretation not matching national-level laws, in essence blocking free and fair trade. Business representatives noted that there remains a big difference between the treatment of foreign firms and Chinese firms, with Chinese firms having more flexibility for their scope of activity and fewer restrictions under local interpretations of the laws and regulations. Attendees complained that licenses remain a problem. It is unclear which agencies have responsibility, where one can find out about the procedures, and guidance on how to move the process forward when it stalls. They asked that the USG continue to pressure the central and provincial governments to speed up licensing procedures and processing.

¶5. (U) Although new transparency laws have been passed in Guangzhou requiring public comment on draft laws, some draft laws do not have comment periods. Business representatives did agree that most of

GUANGZHOU 00000198 002 OF 002

the laws could be found on the Guangzhou government website. One lawyer commented that many laws and regulations are promulgated but not implemented. One law they expect to be implemented is the new labor law, which U.S. businesses expect to disadvantage them due to the virtual elimination of temporary workers and their integration into a company's regular workforce. Attendees complained that none of the U.S. business suggestions appear to have had an impact on the draft law. Finally, business representatives noted that developing a relationship with regulators and officials in government agencies - while not the best way to do business - remains the critical reality they face when trying to make a deal.

¶6. (U) During the transparency roundtable session, dinner at the Consul General, and at a larger AmCham reception for the General Counsel, business representatives emphasized the importance of more high-level visitors from the United States to advance U.S. commercial interests. This would not only improve market access and but also expand opportunities for American enterprises in areas such as medical and environmental equipment, educational services, and many more. They all expressed great appreciation for Mr. Sullivan's visit.

¶7. (U) Throughout the trip, the General Counsel was accompanied by his Chief of Staff Joel Blank, AUSTR Audrey Winter, Trade Facilitation Office Director Ira Belkin, U.S. State Department Economic Officer Jim Loi, and Principal Commercial Officer Mike Murphy. The Consul General and Economic/Political Section Chief accompanied General Counsel Sullivan to a number of his events.

¶8. (U) General Counsel Sullivan did not clear this cable.

Goldberg